

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: June 15, 1992

FAA Order No. 92-40

In the Matter of:

MICHAEL EDWARD WENDT

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) Docket No. CP89GL0084
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DECISION AND ORDER

Respondent Michael Edward Wendt ("Respondent") has appealed from the written initial decision issued by Administrative Law Judge Burton S. Kolko on May 17, 1991.^{1/} The law judge held that Respondent violated Sections 91.75(b) and 91.9 of the Federal Aviation Regulations (FAR), 14 C.F.R. §§ 91.75(b) and 91.9 (1988),^{2/} but reduced the civil penalty sought by the Federal Aviation Administration (FAA) ("Complainant") from \$1,500 to \$1,000.

^{1/} A copy of the law judge's initial decision is attached.

^{2/} Part 91 of the FAR was recodified effective August 18, 1990. The citations in this opinion and order are to the former Part 91 sections, because the incident in question occurred before the recodification. In the recodified version of Part 91, former § 91.75(b) is § 91.123(b) and former § 91.9 is § 91.13. The recodification did not affect the substance of these provisions.

14 C.F.R. § 91.75(b) (1988) provided: "Except in an emergency, no person may, in an area in which air traffic control is exercised, operate an aircraft contrary to an ATC instruction."

14 C.F.R. § 91.9 (1988) provided: "No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

The dispute in this case concerns whether Respondent, who admits that he penetrated an intersecting runway contrary to air traffic control instructions, should be found to have violated the regulations. Respondent has already obtained a waiver of the civil penalty under the Aviation Safety Reporting Program (ASRP).^{3/} Thus, this case does not concern the appropriate amount of a monetary sanction. Rather, it concerns only whether there should be a finding of violation.

Respondent has argued on appeal that he should not be held accountable, or at least not solely accountable, for the runway incursion. Respondent maintains that air traffic control was at least equally at fault. A finding of violation is also inappropriate, argues Respondent, given the bad weather and the lack of adequate visual cues to alert him to the intersecting runway.

Complainant's position is that this is a simple case involving a pilot's failure to follow a clear and unambiguous instruction to hold short of an intersecting runway. Complainant asserts that when Respondent acknowledged the instruction, he was acknowledging that he understood where he was and where he was going. Complainant also disputes Respondent's claim that he did not have adequate visual cues to alert him to the intersecting runway.

The facts that gave rise to this dispute are as follows. On March 3, 1988, Respondent was pilot in command of Britt

^{3/} Waiver of sanction under the ASRP is described in FAA Advisory Circular No. 00-46C (February 4, 1985).

Airways Flight Number 724, which landed on Runway Four Left (4L) at Indianapolis International Airport shortly after 8:00 a.m. local time. According to Respondent, there was light rain, light snow, and fog at the airport when he landed. While visibility was officially reported at 3 miles, Respondent testified that his visibility from the cockpit was only 1 mile. He testified further that his peripheral vision was even more limited due to the snow and rain on the side windows in the cockpit.

After landing, Respondent turned right onto Taxiway Alpha Five (A-5), a high speed turnoff leading onto Taxiway Alpha. Respondent contacted ground control as he taxied northeast on Taxiway Alpha toward the ramp area. At the same time, an Eastern Airlines jet coming from the ramp was taxiing in the opposite direction on the same taxiway. The ground controller's first transmission to Respondent was:

Britt Air seven twenty four Indianapolis ground roger
can you pull off to the right side I don't know if you
and Eastern can pass on the same taxiway or else up to
the next one and, ah, pull off.

Complainant's Exhibit 4 at 3.^{4/} The ground controller testified that she intended to give Respondent the option of either passing the Eastern aircraft on the taxiway--which she admitted was a doubtful possibility--or turning off at the next intersection.

^{4/} Complainant's Exhibit 4 is a transcript of the pertinent transmissions on the re-recording of the air traffic control communications.

Because the taxiway was not wide enough for the two aircraft to pass, the ground controller decided to move the Britt aircraft off the taxiway so that the Eastern aircraft could pass by. She instructed the two aircraft on Taxiway Alpha as follows:

Eastern, ah, seventy nine fifty why don't you just hold short of that next intersection and, ah, Britt Air seven twenty four go straight ahead and use that next turn off though hold short of four left and just pull off to the side.^{5/}

Complainant's Exhibit 4 at 3. Respondent complied by turning left onto Taxiway Alpha Three. The ground controller's next transmission was:

Britt air seven twenty four thanks after Eastern passes, ah, you can cross runway three one to the north to the terminal.

Complainant's Exhibit 4 at 3. Respondent testified that this instruction required him to either: (1) execute a 180-degree turn back to Taxiway Alpha--which he did not have room enough to do--or (2) shut down the aircraft and have it towed back to the taxiway. Instead, he explained to the ground controller that he needed to use Runway 4L to go to the terminal.

After coordination with the local controller, the ground controller cleared Respondent to taxi on Runway 4L to Runway 31 as follows:

Britt Air seven twenty four turn right onto four left hold short runway three one traffics on the roll for three one.

^{5/} The last phrase in this instruction--"and just pull off to the side"--was actually transcribed as "which is power off to the side." The ground controller testified, without objection from Respondent, that the phrase should read as quoted in the text. Respondent testified that he understood the instruction.

Complainant's Exhibit 4 at 4 (emphasis added). Respondent acknowledged the instruction. He then turned right and taxied in a northeasterly direction on Runway 4L. However, Respondent did not stop short of Runway 31. As he began to cross Runway 31, the ground controller asked him to verify that he was holding short, but she was unable to complete her transmission before he entered the intersection.^{6/} Realizing his mistake, Respondent then apologized to the ground controller for penetrating an active runway. Rather than stopping in the intersection of the two runways, Respondent rolled through the intersection and held at Taxiway Bravo. According to Respondent, he had mistaken Taxiway Bravo for Runway 31.

The law judge found that Respondent crossed an active runway in violation of Section 91.75(b) of the FAR. He also found that Respondent's action violated Section 91.9 because it was careless and inherently dangerous. The law judge rejected Respondent's arguments that air traffic control was to blame

^{6/} There is some dispute about whether the ground controller's request to Respondent to verify that he was holding short came before or after he entered the runway. Respondent testified that he had already entered the runway by the time the ground controller contacted him, while the ground controller insisted that she contacted him before he entered the intersection. The ground controller's transmission--"Britt seven twenty four verify you are holding short of thirty one" (Complainant's Exhibit 4 at 4)--took 4 seconds to complete, according to Respondent. Two seconds after this transmission began, the Cessna transmitted to the local controller, "Ah, what's that guy doing on the runway at (sic) I'm taking off?" Complainant's Exhibit at 9.

The law judge found that the ground controller began her transmission when she realized Respondent might not stop short of the intersecting runway, but that she could not have completed her transmission before Respondent's entrance on the runway. There is no reason to overturn the law judge's finding.

for the runway incursion. He noted, however, that standard markings signaling the approach of an intersecting runway were not present because Respondent was taxiing on a runway rather than on a taxiway. The law judge concluded that Respondent's "[f]ailure to spot intersecting Runway 31 ... was to some extent understandable, albeit not excusable." Initial Decision at 16.

On appeal, Respondent has argued persuasively, both in his brief and at oral argument, that because the usual cues enabling a pilot to identify the intersecting runway were not present, he should not be found to have violated the regulations. And in fact, it is true that: (1) there was no yellow hold short line immediately preceding the runway intersection; (2) there was no runway edge stripe crossing his path; (3) there was no runway center line crossing his path; and (4) there was no sign indicating his arrival at a runway intersection.^{17/} All of these cues would have been directly in Respondent's path had he been taxiing on a taxiway rather than on Runway 4L. In addition, although no specific air traffic control procedure was violated, it is at least arguable that poor air traffic control coordination and technique was a factor as well.

The absence of these important visual cues, in combination with what may have been confusing and confidence-eroding

^{17/} Indeed, as the law judge noted, sometime after Respondent's inadvertent runway incursion, the Indianapolis Airport Authority placed a red sign on Runway 4L alerting the pilot to intersecting Runway 31. Initial Decision at 17.

instructions from air traffic control, led to an understandable mistake on Respondent's part. Safety normally requires that pilots be held strictly accountable for their mistakes. In this unique factual situation, however, a finding of violation on Respondent's record would be unjust.

Aviation safety depends on the development of mutual trust and confidence between air traffic controllers and pilots. When the system is working properly, a certain synergy develops between air traffic controllers and pilots. That apparently failed to happen in this case, perhaps due to what may have been confusing clearances issued by the controller. The FAA has no more important goal than aviation safety. To that end, air traffic controllers and pilots alike must exercise good judgment and be ever vigilant in the performance of their duties.

Based on the foregoing, the law judge's finding that Respondent violated Sections 91.75(b) and 91.9 of the FAR is reversed. As a result, the other issues raised by Respondent on appeal need not be addressed.



BARRY LAMBERT HARRIS
Acting Administrator
Federal Aviation Administration

Issued this 12th day of June, 1992.